

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

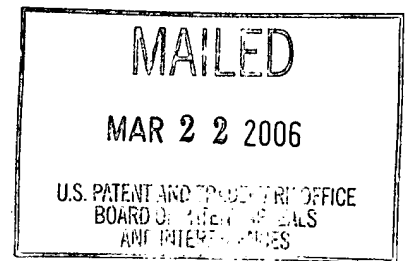
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL J. SORENSEN
and ROBERT LEE POPP

Appeal No. 2006-0477
Application 09/849,594

ON BRIEF



Before GARRIS, WARREN and TIMM, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

REMAND TO THE EXAMINER

We remand the application to the examiner for consideration and explanation of issues raised by the record. 37 CFR §41.50(a)(1) (2005); Manual of Patent Examining Procedure (MPEP) § 1211 (8th ed., Rev. 3, August 2005).

The official electronic records of the USPTO contain the following documents for this application:

Examiner's answer mailed February 21, 2005;

Reply brief filed June 10, 2005;

Supplemental examiner's answer mailed June 20, 2005, differing solely from the answer by the addition of the initials of the second conferee on the signature page;

Supplemental reply brief filed August 18, 2005, presenting additional arguments augmenting arguments in the reply brief; and

Examiner's communication mailed November 5, 2005, stating that "[t]he [supplemental] reply brief filed 8/18/05 has been entered and considered . . . [and] forwarded to the Board."

The following rules apply to the filing of a reply brief, the examiner's response to a reply brief and a supplemental reply brief.

37 CFR §41.41 (September 2004)

(a)(1) Appellant may file a reply brief to an examiner's answer within two months from the date of the examiner's answer.

37 CFR §41.43 (September 2004)

(a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

....

(b) If a supplemental examiner's answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner's answer within two months from the date of the supplemental examiner's answer.

It is clear from the record that, contrary to the above rules, the examiner did not acknowledge receipt and entry of the reply brief filed under 37 CFR §41.41(a)(1) as required by 37 CFR §41.43(a)(1), and mailed a supplemental answer which contained no language "responding to any new issue raised in the reply brief" as provided in 37 CFR §41.43(a)(1). Thus, there was no "supplemental examiner's answer" within the meaning of 37 CFR §41.43(a)(1) required for the filing of a supplemental reply brief under 37 CFR §41.43(b). *See also* MPEP § 1208 (8th ed., Rev. 3, August 2005).

Accordingly, the examiner is required to take appropriate action consistent with current examining practice and procedure to clarify the record with respect to the status of the above documents under the above rules, with a view toward placing this application in condition for decision on appeal with respect to the issues presented.

This remand is *not* made for the purpose of directing the examiner to further consider the grounds of rejection.

We hereby remand this application to the examiner, via the Office of a Director of the Technology Center, for appropriate action in view of the above comments.

This application, by virtue of its “special” status, requires immediate action. It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal in this case. *See* MPEP § 708.01(D) (8th ed., Rev. 3, August 2005).

Remanded

Bradley R. Garriss
BRADLEY R. GARRIS

BRADLEY R. GARRIS
Administrative Patent Judge


CHARLES F. WARREN

CHARLES F. WARREN
Administrative Patent Judge

Catherine Tinn

CATHERINE TIMM
Administrative Patent Judge

BOARD OF PATENT APPEALS AND INTERFERENCES

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